

**SPYRIDON, KOCH,
PALERMO & DORNAN**
LLC | ATTORNEYS AT LAW



June 9, 2005

Hon. Delores R. Boyd, District Judge
U.S. District Court, Middle Dist. of AL
P.O. Box 711
Montgomery, AL 36101

RE: Kelley Foods of Alabama, Inc. vs. Myers Nissi & Co., Inc.,
a corporation, d/b/a Verticalsoft
Civil Cause No.: 1:04cv 1246-B
Our File No.: M0704-1

Dear Judge Boyd:

In conformity with the scheduling order entered in this matter, the parties hereby advise the Court that they have engaged in settlement discussions with an eye toward attempting early resolution of this matter. The parties are cognizant of the time and expense involving in litigating this matter to conclusion. However, the parties still strongly disagree in their respective assessments of what the case is worth. Accordingly, no settlement has been reached.

The parties do believe mediation may be helpful at a later stage of this matter, but they agree that the case is not yet in a posture such that mediation is warranted. Accordingly, the parties request that the Court revisit the viability of mediation after they have had an opportunity to engage in some additional discovery to better assess each others' respective positions.

Thank you for your time and attention to this matter

With best regards, we remain

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'Paul D. Palermo'.

PAUL D. PALERMO
JOHN M. HERKE
Attorneys for Defendant
Myers Nissi & Co.

A handwritten signature in cursive script, appearing to read 'Mark Vaughan (by permission)'.

MARK A. VAUGHAN
Attorney for Plaintiff
Kelley Foods

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